

LOS ANGELES COUNTY REGIONAL PLANNING COMMISSION STAFF REPORT

CASE NO. RADV 2005-00007 DENSITY BONUS ORDINANCE AMENDMENTS

SUMMARY

The proposed amendments to Title 22 (Zoning Ordinance) of the Los Angeles County Code implement state-mandated density bonus provisions for affordable and senior citizen housing, pursuant to Section 65915 of the California Government Code (State Density Bonus Law). The proposed ordinance amendments (*Attachment 1*) also restructure affordable and special needs housing provisions in Title 22 for ease of use, to delete obsolete provisions, to amend existing references for internal consistency, and to establish revised fees. The ordinance will cover all unincorporated areas of Los Angeles County.

BACKGROUND

The State of California mandates that all local jurisdictions must grant a density bonus to housing developments of five or more units, if they include a specified percentage of affordable or senior citizen housing. In September 2004, the Governor signed SB 1818, which amended Government Code Section 65915, pertaining to density bonuses for affordable and senior citizen housing developments, and became effective on January 1, 2005. A copy of the State's Density Bonus Law is attached to this report (*Attachment 2*).

On January 26, 2005, the Regional Planning Commission instructed DRP staff to commence work on amending the County Code to reflect the provisions in the State law. On February 23, 2005, the Regional Planning Commission discussed the housing crisis in Los Angeles County, including how amending the County's current density bonus provisions will help eliminate potential regulatory barriers to increasing the supply of affordable housing.

During the last several months, the staff has made presentations and led discussions with members of the County's Housing Advisory Committee and interested persons on the changes made to the State Density Bonus Law, particularly with the recent passage of SB 1818. In March, the DRP staff met with Community Development Commission staff to discuss concepts for the draft ordinance. In the interim, DRP staff also worked with County Counsel to prepare guidelines to assist intake and case processing planners to implement the State law, until changes can be made to the County Code. A copy of the Interim Guidelines is attached to this report (*Attachment 3*). On June 2, 2005, DRP staff finalized and distributed the Interim Guidelines and conducted subsequent briefings for all planning staff.

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DISCUSSION

In Los Angeles County there is a shortage of housing, which adversely affects housing affordability for Los Angeles County's residents. There is also a need for affordable housing to accommodate a diversity of needs, including home ownership, rental housing and special needs. The *Los Angeles Times* recently reported that the median home price in Los Angeles County is nearly \$430,000. For rental housing, the National Low Income Housing Coalition reported last year that a minimum wage worker has to work at least 128 hours a week to afford a two bedroom apartment in Los Angeles County. The Southern California Association of Governments reported earlier this year that, between 1998 through 2005, Los Angeles County has issued building permits for the construction of only 21,682 out of 52,202, or 37%, of the housing units needed in the unincorporated area to meet its fair share of the regional housing need.

Amending the County's Zoning Code provisions will reduce potential regulatory constraints to building affordable housing and encourage the production of more affordable housing. Simplifying the review process, providing more flexibility with concessions or incentives and giving more options for density bonuses, such as land donations in lieu of affordable housing set-asides, will result in considerable savings in time and money to applicants that provide affordable and senior citizen housing, and will ensure the County is in conformance with the State law. Since 1998, very few units of affordable housing have been produced in the unincorporated area through this program, and the recent changes to State law were intended to improve the State's program and enhance local incentives for the production of affordable housing and senior citizen housing.

The proposed ordinance amendments comply with State law that requires the County to adopt an ordinance to implement Government Code Section 65915 (the State's Density Bonus law). The proposed ordinance amendments include the deletion of Section 22.52.202 *Density bonus—additional provisions*, and the creation of a new Part 17 of Chapter 22.52, which outlines the provisions for affordable and special needs housing, and a new Part 18 of Chapter 22.56, which outlines procedures for processing the new "Housing Permit." In addition, the staff is recommending a new fee for the Housing Permit.

New Density Bonus Provisions

Under the County's existing provisions, projects require a minimum 10% housing set-aside for Very Low income households, a minimum 20% housing set-aside for Lower income households, and a minimum 50% housing set-aside for senior citizens to qualify for density bonuses. The existing provisions offer density bonuses from at least 25% to 50% for Very Low and Lower income and senior citizen housing set-asides through an approved Conditional Use Permit.

SB 1818 reduces by half the affordable housing set-asides required to qualify for density bonuses and requires senior citizen housing developments, as defined by Sections 51.3 and 51.12 of the

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California Civil Code, to consist of 100% senior citizen units. The proposed ordinance amendments qualify a minimum 5% housing set-aside for Very Low income households, a minimum 10% housing set-aside for Lower income households, a new minimum 10% housing set-aside for Moderate income households (in condominium and planned developments) and senior citizen housing developments for density bonuses.

SB 1818 also reduces the minimum density bonus from 25% to 20 % for projects that set aside housing for Very Low and Lower income households, and from 25% to 5% for projects that set aside housing for Moderate income households. In addition, density bonuses can increase on a sliding scale, up to a maximum of 35%, by increasing the affordable housing set-aside. For every 1% set-aside increase, the density bonus increases, up to 35%, as follows: Very Low, +2.5%; Lower, +1.5%; Moderate, +1%. SB 1818 also grants a flat 20% density bonus for all senior citizen housing developments. The proposed ordinance amendments implement these density bonuses through an approved administrative, non-discretionary Housing Permit.

Proposed Qualifying Set-Asides for Density Bonuses through SB 1818		
	Housing Set-Aside	Density Bonus
Very Low 50% AMI or less	At least 5%	At least 20%, up to 35%
Lower 80% AMI or less	At least 10%	At least 20%, up to 35%
Moderate (condominium or planned development) 120% AMI or less	At least 10%	At least 5%, up to 35%
Senior Housing Development	Per CA Civil Code 51.12 & 51.3	20%

Concessions or Incentives

Prior amendments to the State law have required the granting of at least one concession or incentive to make an affordable housing development feasible. Concessions or incentives are typically reductions in development standards or modifications of the Zoning Code, although the law permits a developer to request any other regulatory concession or incentive that would result in identifiable, financially sufficient and actual cost reductions. Some examples of concessions or incentives that assist in the production of affordable housing cited in the State law describe reductions in parking (beyond the maximum parking standards included in the law, applicable to the entire residential development), as well as reductions in site development standards (such as setbacks, lot coverage, square footage requirements, height, and stories requirements). Only projects with affordable housing set-asides qualify for concessions or incentives.

Applicants qualify for up to three concessions or incentives as follows:

Proposed Sliding Scale for Granting Concessions and Incentives through SB 1818			
	Very Low Income 50% AMI or less	Lower and Moderate 80% AMI or less and 120% AMI or less	Concessions and Incentives
Affordable Housing Set-Aside	At least 5%	At least 10%	1
	At least 10%	At least 20%	2
	At least 15%	At least 30%	3

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In denying requests for concessions or incentives, the applicant has the presumption of validity, and the County has the burden of proof to justify the denial by making written findings that:

- The concession or incentive is not required to provide for affordable housing costs or for rents for the targeted units to be set aside; or
- The concession or incentive will have a specific adverse impact upon public health and safety, on the physical environment or on a property listed in the California Register of Historical Resources, and there is no way to reasonably mitigate or avoid the adverse impact without making the project unaffordable to Moderate, Lower or Very-Low income households.

Developers may initiate judicial proceedings if the County refuses to grant the request in violation of the State law. If the County is unsuccessful in defending the suit, the plaintiff is entitled to reasonable attorney's fees and the costs of the suit.

Waiver or Modification of Development Standards

SB 1818 also provides that an applicant can request waivers or modifications of development standards, as needed. All projects that qualify for density bonuses can request waivers or modifications of development standards, provided that the applicant can show that they are necessary in order to make the housing units economically feasible. Waivers and modifications of development standards can be requested in addition to concessions or incentives. Denials for requests for waivers or modifications of development standards are based on the same criteria used to evaluate concessions or incentives.

Like concessions or incentives, applicants may initiate judicial proceedings if the County refuses to grant the request in violation of the State law. If the County is unsuccessful in defending the suit, the plaintiff is entitled to reasonable attorney's fees and the costs of the suit.

Duration of Affordability

SB 1818 also amends the provisions for monitoring and preserving the affordability of the housing set-asides. The proposed ordinance amendments require the drafting of an affordable housing agreement, as well as a covenant, that runs with the land. The County's existing provisions require Very Low and Lower income housing set-asides to remain affordable for 10 years, and 30 years when concessions or incentives are given. To reflect prior amendments to the State law, the proposed ordinance amendments specify that the duration of affordability for all units for Very Low and Lower Income households is 30 years, or longer if required by a construction or mortgage financing assistance program, or rental subsidy program.

To reflect SB 1818, for condominium or planned development units affordable to Moderate income households, the proposed ordinance requires income verification of only the initial buyer.

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Upon resale, the law requires equity-sharing between the seller and the County, in which the seller of the unit retains the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The County's proportionate share of appreciation, which must be used within three years to promote home ownership, equals the percentage by which the initial sale price to the Moderate income household was less than the Fair Market Value of the home at the time of initial sale.

Land Donations

In addition to qualifying for density bonuses for affordable housing set-asides and senior citizen housing developments, SB 1818 also adds provisions to grant density bonuses for land donations. An applicant for a tentative subdivision map, parcel map or residential development approval can qualify for a minimum 15% density bonus for a land donation, if it meets specific requirements, including being able to accommodate at least 10% of the units of the proposed housing development for Very Low income households. For every 1% increase in the number of units for Very Low income households that the land donation can accommodate, the density bonus increases 1%, up to 35%. The land donation can be combined with the inclusion of affordable housing set-asides, as long as the combined density bonus does not exceed 35%.

Proposed Qualifying Land Donation for Density Bonuses through SB 1818		
	Housing Set-Aside	Density Bonus
Land Donation	At least 10%, for Very Low income households.	At least 15%, up to 35%

Child Care Facilities

Prior amendments to the State Density Bonus Law have mandated that if a project includes a child care facility, the applicant is entitled to an additional density bonus in the amount equivalent to or more than the square footage of the child care facility, or an additional concession or incentive, that contributes to the economic feasibility of the construction of the child care facility. Child care facilities associated with density bonuses for affordable housing must remain in operation for a period of time that is as long or longer than the period of time during which the affordable housing set-asides are to remain affordable. In addition, the percentage of children of Very Low, Lower and Moderate income households that attend the child care facility must equal a percentage that is equal to or greater than the percentages of dwelling units that are required for Very Low, Lower and Moderate income households.

Parking Requirements

SB 1818 includes maximum parking requirements that may be requested by a developer of an affordable housing project. These standards not only apply to the affordable set-aside units, but to the entire residential development. These standards are inclusive of handicapped and guest parking and apply to rental and for-sale projects as follows:

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- 0-1 bedroom: one onsite parking space
- 2-3 bedrooms: two onsite parking spaces
- 4 or more bedrooms: 2.5 parking spaces

Fees

The proposed ordinance amendments include a new fee for the Housing Permit that is \$1270.00. The new fee is less than the existing fee for a Conditional Use Permit for density bonuses—\$1,913.00, but higher than the fee for a typical site plan review, at \$637.00. The additional fees associated with the processing of Housing Permits come from the administrative costs for evaluating requests for concessions or incentives, and waivers or modifications of development standards.

CONSISTENCY WITH THE GENERAL PLAN

The proposed ordinance is in conformance with the purposes, intent, and provisions of the County's General Plan. The ordinance will encourage the development of housing, which is in keeping with the need for housing for all income levels, as stated in the General Plan.

Specifically, the proposed ordinance supports **Goal 1** in the **Housing Element**, which promotes *“(a) wide range of housing types in sufficient quantity to meet the needs of current and future residents, particularly persons and households with special needs, including but not limited to lower-income households, senior citizens, and the homeless.”*

The proposed ordinance also supports **Goal 2** in the **Housing Element**, which promotes *“(a) housing supply that ranges broadly enough in price and rent to enable all households regardless of income, to secure adequate housing.”*

In addition, the proposed ordinance supports **Goal 3** in the **Housing Element**, which promotes *“(n) neighborhoods that protect the health, safety and welfare of the community, and that enhance public and private efforts to maintain, reinvest in, and upgrade the existing housing supply.”*

ENVIRONMENTAL DOCUMENTATION

The staff prepared a Negative Declaration for the draft ordinance amendments in compliance with the California Environmental Quality Act (CEQA). The Initial Study showed that there is no substantial evidence that the amendments will have a significant effect on the environment. The Initial Study and Negative Declaration are included as **Attachments 4 and 5**.

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PUBLIC COMMENT

The notice of public hearing was sent to over 100 persons and advertised in 12 newspapers. The draft ordinance and draft environmental documentation were distributed to all County libraries and several public agencies. We have not received any public comments as of this date.

RECOMMENDATION

The staff recommends that the Regional Planning Commission approve the draft ordinance amendments along with the following changes proposed by the staff:

Additional Changes to the Proposed Ordinance

The staff has identified the following potential changes to the proposed ordinance amendments since the draft was last distributed:

- Complete some minor editorial changes for clarity and consistency;
- Add proposed amendments to relevant sections of Title 22 related to parking concessions;
- Add definitions of “housing development” and “senior citizen housing development”;
- Delete language that incorrectly suggests that the children who attend a child care facility related to affordable housing density bonuses must be a tenant of that housing development;
- Add language to specify that the term of affordability for units set aside for Very Low and Lower income households begins after the Certificate of Occupancy is issued;
- Add language to clarify that senior citizen housing developments are not entitled to concessions or incentives or a density bonus greater than 20%, and to clarify that senior citizen housing developments are not categorized as affordable housing developments, unless specified;
- Add vesting language (grandfather clause) for projects whose applications have been deemed complete prior to the effective date of the ordinance;
- Add language regarding Notice and Appeal: mailed notice of the application and determination to be provided to all owners of properties abutting, across the street or alley from, or having a common corner with the subject property, and to other persons or groups as identified by the Director (these would include Town Councils, Homeowner’s Associations and others typically on our courtesy mailing lists for the zoned district where the project is located). The determination by the Director is final unless appealed to the Regional Planning Commission within 15 calendar days of receipt of the decision by the applicant. The applicant and any interested person may appeal. The decision of the Commission is final.

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Issues for Discussion

The staff is providing recommendations on the following two issues, to be considered for discussion by the Regional Planning Commission:

- **Issue #1:** Staff does not recommend providing a list or “menu” of specified concessions or incentives in the ordinance, or adding a public hearing requirement for evaluating those concessions or incentives not included in that list or “menu.”

The uncertainty created by the State law over which concessions or incentives an applicant can potentially request has raised concerns over allowing the granting of concessions or incentives through a non-discretionary review. In response to this, the City of Los Angeles, for example, adopted a two-tiered approach to evaluating concessions or incentives, in which they apply an administrative review for concessions or incentives chosen from a menu of choices. Those requested concessions or incentives not listed on the menu must go through a Commission-level review process including a public hearing.

The DRP staff has noted that a public hearing before the Planning Commission is typically required of existing County “discretionary” review processes, and it does not appear that a public hearing requirement would conform to the spirit of the State Density Bonus law. The State law is clear that the granting of a density bonus and/or a concession or incentive shall not be interpreted, *in and of itself*, to require a general plan amendment, local coastal plan amendment, zoning change, CUP, or other discretionary approval. The purpose of granting concessions or incentives is to allow the applicant to reach the densities created through the density bonus, as well as to contribute to the financial feasibility of providing affordable housing units.

In addition, the State requires a detailed review based on financial feasibility of providing affordable housing set-asides, as well as the potential for the concession or incentive to have any specific adverse impact upon the public health and safety, the physical environment, or on any real property listed on the California Register of Historic Places (and for which there is no feasible method to satisfactorily mitigate or avoid a specific adverse impact without rendering the development unaffordable to Very Low, Lower and Moderate income households). There are also other review procedures, such as through CEQA, that would limit a project from having a potentially significant impact on the environment.

- **Issue #2:** Staff recommends that the Commission maintain a density bonus capped at 20% for senior citizen housing developments.

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The County's existing provisions allow a density bonus of 25%, up to 50%, with an approved CUP for projects that set-aside a minimum 50% housing for senior citizens, while SB 1818 requires 100% senior units, as defined in the California Civil Code, and grants a flat 20% density bonus without concessions or incentives. Although senior citizen housing developments address special needs, they are market-rate residential developments. Incentives for *affordable* senior citizen housing developments are already addressed through the provisions in the State law that grant density bonuses for Very Low, Lower and Moderate income housing set-asides. Furthermore, Section 65915 (e) of the State law does allow waivers or modifications of development standards for senior housing developments if the applicant provides the financial rationale for needing the waiver or modification.

Recommended Motion

I move that the Regional Planning Commission close the public hearing and indicate its intent to APPROVE the proposed amendments to the County Code to implement the State Density Bonus provisions for affordable and senior citizen housing, along with the changes proposed by the staff, and instruct staff to prepare the appropriate resolution for our consideration and adoption at a future meeting.

Attachments:

- Attachment 1: Draft Density Bonus Ordinance, May 10, 2005
- Attachment 2: CA Government Code Section 65915
- Attachment 3: Density Bonus Interim Guidelines, June 2, 2005
- Attachment 4: Initial Study, May 10, 2005
- Attachment 5: Negative Declaration, May 10, 2005

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